
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

MICHAEL ERNEST LEE JOYNER SR.,

Plaintiff,

v.

ROSIE RIVERA et al.,

Defendants.

**MEMORANDUM DECISION &
ORDER DENYING MOTIONS FOR
RELIEF FROM JUDGMENT**

Case No. 2:22-CV-720 DAK

District Judge Dale A. Kimball

On September 18, 2023, the Court ordered Plaintiff to within thirty days show cause why his case should not be dismissed because he did not comply with the Court's earlier Order to file his initial partial filing fee of \$8.90. (ECF No. 17.) Six weeks later, when Plaintiff did not respond to the Order to Show Cause, the Court dismissed this case, noting the Court's most recent mail item sent to Plaintiff was returned to sender, marked, "UNABLE TO FORWARD" and "PRISONER RELEASED." (ECF No. 19.) After another ten weeks had passed, Plaintiff moved twice for reconsideration of the dismissal. (ECF Nos. 21, 23.)

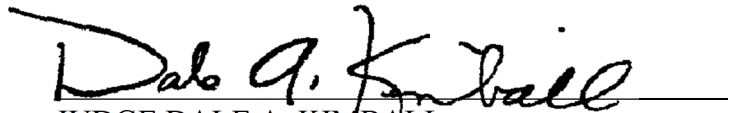
Federal Rule of Civil Procedure 60(b) states in relevant part, "On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons . . . mistake, inadvertence, surprise, or excusable neglect." Plaintiff appears to rely on the Court's mistake as the basis for relief from judgment here. However, Plaintiff's motion did not at all address the reason why the action was dismissed, which was his failure to file the required initial partial filing fee. Neither did Plaintiff address the time gap and why there was never a window of time in his months of silence here in which he could have pursued this dismissed

case. His only argument is that, in other cases, the sanction of dismissal was "reversed because lesser sanctions were available." (ECF No. 21.) But, in making this argument, Plaintiff does not acknowledge the Court's discretion, his lack of accountability, and that his action was dismissed without prejudice and--based on the applicable statute of limitation--appears eligible for refiling in a new case.

Based on the above, **IT IS ORDERED** that Plaintiff's post-judgment motions are **DENIED**. (ECF Nos. 21, 23.) This action remains closed.

DATED this 15th day of July 2024.

BY THE COURT:


JUDGE DALE A. KIMBALL
United States District Judge